



Legislative Bulletin.....November 6, 2001

Contents:

1. **H.R. 1408**—Financial Services Antifraud Network Act
2. **H.R. 2998**—To authorize the establishment of Radio Free Afghanistan
3. **H.R. 2047** — Patent and Trademark Office Authorization Act of 2002
4. **H.R.768** — Need-Based Educational Aid Act of 2001—Agreeing to Senate Amendments

H.R. 1408—Financial Services Antifraud Network Act (Rogers, Mike)

Order of Business: The bill is scheduled to be considered on Tuesday, November 6th, under a motion to suspend the rules and pass the bill.

Summary: H.R. 1408 is aimed at “safeguard[ing] the public from fraud in the financial services industry.” The bill would require financial regulators to coordinate their computer systems to share information about fraud and resulting disciplinary actions taken. The bill also would establish criminal penalties for regulators who intentionally disclose confidential or privileged information to the public. Additionally, the bill would authorize these regulators to ask the FBI to conduct criminal background checks on individuals in the financial services industry (if circumstances warrant checks) and impose criminal penalties for the improper use of such information.

Specifically, H.R. 1408 would require financial regulators to, in accordance with certain guidelines,

- 1) develop procedures for a network to share anti-fraud information; and
- 2) coordinate to further improve upon the anti-fraud efforts of network participants in accordance with minimum requirements and implementation guidelines. The financial regulators would have to submit the plan to Congress within 6 months of this bill’s enactment and actually implement the plan (assuming the plan meets the goals outlined in this bill) within 18 months after the submission deadline.

The bill would prescribe guidelines governing the financial regulators’ control of access to the network.

If the Secretary of the Treasury determines that financial regulators have not submitted a proper plan for, or successfully implemented, an anti-fraud network as summarized above, H.R. 1408 would create the “Anti-fraud Subcommittee” within the President's Working Group on Financial Markets (established by Executive Order 12631). The subcommittee would be charged with establishing the anti-fraud network and the rules for network access--

and would be prohibited from creating a new database or incurring significant costs in modifying existing databases for the anti-fraud network.

The Subcommittee would consist of the Secretary of the Treasury, the SEC Chairman, a state insurance commissioner designated by the National Association of Insurance Commissioners, the Chairman of the Commodity Futures Trading Commission, a designee of the Chairman of the Federal Financial Institutions Examination Council, and liaisons representing the remaining financial regulators listed above and law enforcement. Subcommittee members would serve without additional compensation for these services, could request administrative and technical support, and would only be allowed to facilitate information coordination.

The bill would prohibit the Subcommittee from imposing any fee or assessment, or apportioning any contribution against any member or liaison, unless the member or liaison consents. A member or liaison could request reimbursement of reasonable costs for providing access prior to granting the Subcommittee or a participant access to relevant information.

The regulators affected by H.R. 1408 would be:

- Every federal banking agency;
- The Securities and Exchange Commission (SEC);
- The Commodity Futures Trading Commission;
- The National Credit Union Administration;
- The Farm Credit Administration;
- The Federal Housing Finance Board;
- The Federal Trade Commission;
- The Secretary of the Treasury;
- The Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development;
- The Appraisal Subcommittee of the Financial Institutions Examination Council;
- Any state bank supervisor, including the Conference of State Bank Supervisors;
- Any state savings association supervisor, including the American Council of State Savings Supervisors;
- Any state insurance commissioner, including the National Association of Insurance Commissioners;
- Any state securities administrator, including the North American Securities Administrators Association;
- Any state credit union supervisor, including the National Association of State Credit Union Supervisors;
- The National Association of Securities Dealers;
- The National Futures Association; and
- Any other self-regulatory organization that engages in or coordinates regulatory and supervisory activities, with respect to any person engaged in the business of conducting financial activities, and is subject to the oversight of the Securities and Exchange Commission or the Commodity Futures Trading Commission

Confidentiality Provisions.

- The bill would declare “confidential supervisory information” (regarding the anti-fraud network) as privileged from disclosure to anyone except Congress, the Comptroller General, and federal financial regulators. [“Confidential supervisory information” is defined in the bill as any report, file, record, communication, or other information related to the supervisory process between a financial regulator and a person engaged in financial activities that the financial regulator deems to be classified.]
- The bill also would outline procedural guidelines against unauthorized disclosure of confidential information and establish criminal liability for intentional unlawful disclosures (with a maximum penalty of 5 years in prison and/or the greater of \$100,000 or the amount of the actual damages).
- Additionally, the bill would set up guidelines for the sharing of information relating to a criminal investigation. The Attorney General would be authorized to share (for a “reasonable fee”) relevant criminal records with a financial regulator, with certain penalties for improper use of such records.
- If a party seeks to compel disclosure of confidential supervisory information, a financial regulator may file a civil action to prevent such disclosure. Federal law regarding the disclosure of confidential supervisory information would supersede corresponding state law that is “weaker.” [“Weaker” is undefined in the bill.]
- The bill would require the Comptroller General, at the request of Congress, to audit (with the same-as-above requirements for confidentiality) a state insurance regulator or any person who maintains information on the regulator's behalf.

Securities Industry Coordination.

- H.R. 1408 would authorize the SEC to require that an investment adviser file any required documentation through any entity designated by the SEC for that purpose. The SEC would be required to direct such entity, as well as each registered securities association, to establish a toll-free number or “other readily accessible electronic process” to receive and respond promptly to inquiries regarding disciplinary actions and other information involving investment advisers. The new SEC-designated entity and all registered securities associations could charge people (other than individual investors) “reasonable fees” for responses to such inquiries.
- The bill would authorize the SEC to limit the activities or suspend or revoke the registration of any broker or dealer who: 1) has been found by a foreign financial regulatory authority to have violated any foreign statute or regulation regarding banking, thrift activities, credit union activities, or insurance; or 2) is barred by certain state or federal financial regulatory bodies from associating with regulated entities or

engaging in the business of securities, insurance, banking, or thrift or credit union activities.

Possible RSC Concerns: Some Members might be concerned that this bill allows federal law regarding the disclosure of confidential supervisory information to supersede “weaker” state law and calls for state insurance regulators to make all records available to the GAO upon audit. The bill also contains many mandates on the private sector.

Cost to Taxpayers: Though H.R. 1408 would affect authorizations and mandatory spending, CBO estimates that the bill would have no net effect on the federal budget (because of increased fees for information sharing and fines for violations).

Does the Bill Create New Federal Programs or Rules?: YES. By creating the anti-fraud network, federal, state, and private financial regulators would be required to link existing databases regarding fraud and disciplinary actions. The bill would also pre-empt “weaker” state confidentiality laws and mandate state insurance regulators to make all of their records available to the GAO upon audit. Moreover, the bill would require registered securities associations to establish new phone or electronic resources to respond to inquiries about disciplinary actions taken against investment advisers. Additionally, the bill could create an Administration committee on Anti-Fraud if initial efforts to create the anti-fraud computer network do not succeed. Lastly, the bill would establish new fees, fines, and regulations regarding confidential supervisory information.

Constitutional Authority: The Financial Services Committee (in House Report 107-192 Part I) and the Judiciary Committee (in House Report 107-192 Part II) cite constitutional authority in Article 1, Section 8, Clause 1 (the power to provide for the general welfare of the United States); Article 1, Section 8, Clause 3 (the power to regulate interstate commerce); Article 1, Section 8, Clause 5 (the power to coin money and regulate the value thereof); and Article I, Section 8, Clause 18 (the power to make all laws necessary and proper).

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H.R. 2998—To authorize the establishment of Radio Free Afghanistan (Royce)

Order of Business: The bill is scheduled to be considered on Tuesday, November 6th, under a motion to suspend the rules and pass the bill.

Summary (as amended): H.R. 2998 would authorize the Broadcasting Board of Governors to make grants to Radio Free Europe/Radio Liberty for radio broadcasts to the people of Afghanistan in languages spoken in Afghanistan. Within two weeks of the enactment of this bill, Radio Free Europe/Radio Liberty would have to submit a plan for the establishment of these surrogate radio broadcasts (to be known as “Radio Free Afghanistan”).

The bill would authorize \$9.5 million in FY2002 and \$8.0 million in FY2003 for the broadcasting operations of radio Free Afghanistan—and \$10.0 million in FY2002 for capital improvements.

H.R. 2998 would also repeal the ban (contained in section 226 of Public Law 103-236) on any appropriated funds going toward the design, development, or construction of a U.S. short-wave radio transmitter in Kuwait.

Cost to Taxpayers: H.R. 2998 would authorize appropriations of \$19.5 million in FY 2002 and \$8.0 million in FY2003, as detailed above.

Does the Bill Create New Federal Programs or Rules?: Yes, it establishes Radio Free Afghanistan.

Constitutional Authority: A committee report citing constitutional authority is unavailable.

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H.R. 2047 — Patent and Trademark Office Authorization Act of 2002 (Coble)

Order of Business: The bill is scheduled to be considered under suspension of the rules on Tuesday, November 6, 2001.

Summary: H.R. 2047 would authorize to be appropriated to the Patent and Trademark Office (PTO) for Fiscal Year 2002 an amount equal to the user fees collected by the PTO and require that up to \$50 million from that total be set aside for the development of a new computer system for processing patent and trademark applications.

The bill also requires the Director of the PTO to develop a strategic plan that sets forth the goals and methods by which the PTO will

- (1) enhance patent and trademark quality;
- (2) reduce patent and trademark pendency; and
- (3) develop and implement an effective electronic system for use by the PTO and the public for all aspects of the patent and trademark processes.

Cost to Taxpayers: CBO estimates that implementing H.R. 2047 would, subject to appropriations, increase the gross spending of the PTO by \$1.198 billion over the 2002-2004 period. Assuming that the 2002 appropriation act permits PTO to collect fees as authorized in current law, CBO estimates that implementing the bill would not have a significant net impact on the budget over the 2002-2005 period.

Constitutional Authority The Judiciary Committee (in Report no. 107-190) finds authority under Article I, Section 8, Clause 8 of the Constitution (To promote the Progress of Science

and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries).

Does the Bill Create New Federal Programs or Rules: No.

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H.R.768 — Need-Based Educational Aid Act of 2001—Agreeing to Senate Amendments (Smith, Lamar)

Order of Business: The bill is scheduled to be considered under suspension of the rules on Tuesday, November 6, 2001.

Summary: As a result of a Justice Department antitrust lawsuit in 1989 against mostly Ivy League schools (Brown, Columbia, Cornell, Dartmouth, Harvard, Princeton, Penn, Yale, and MIT) for collaborating in offering financial aid, in 1992 Congress wrote a temporary 2-year exemption from antitrust laws for universities that offer need-blind admission. The 1994 reauthorization of ESEA (Section 568) extended the exemption until September 30, 1997 and allowed for the use of a common aid application form and the exchange of student financial information through a third party (a compromise similar to a 1993 settlement with Justice). In 1997 the House passed a bill making the anti-trust exemption permanent, but the Senate merely extended it to Sept. 20, 2001, and the House agreed to the Senate's changes (Public Law No. 105-43).

On April 3, 2001 (Roll Call # 73 <http://clerkweb.house.gov/cgi-bin/vote.exe?year=2001&rollnumber=76>) the House passed a bill again attempting to make the anti-trust exemption permanent, but the Senate amended the bill to extend the anti-trust exemption for another 7 years to 2008 and to authorize a GAO study. The bill before the House agrees to the Senate amendment.

Cost to Taxpayers: The Congressional Budget Office estimated that enacting the House-passed permanent anti-trust exemption would have had no significant impact on the federal budget. No CBO estimate is available for the Senate amendment, though a cost would be incurred by GAO to proceed with the study authorized in the bill.

Constitutional Authority: In a committee report made available *after* the House passage of H.R. 768, the Committee found authority under Article I, Section 8 of the Constitution (Powers of Congress), but failed to reference a specific constitutional authority.

Does the Bill Create New Federal Programs or Rules: The bill would continue to exempt universities that offer need-blind admission from certain antitrust laws when dealing with student financial aid until 2008.

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